

## REMARKS

### *Claim Status*

Claims 1, 2, and 4 are pending.

Claims 3 and 5-31 were previously cancelled without prejudice.

### *Claim Rejections – 35 USC §102*

Claims 1 and 4 are rejected under 35 USC §102(e) as being anticipated by Tamayo *et al.* 6,969,386. Applicant respectfully traverses this rejection.

MPEP §2131 provides that:

*a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 814, F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), the identical invention must be shown in as complete detail as contained in the ... claim. Richardson v. Suzuki Motor Co., 868, F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.*

Applicant's claim 1 requires, among other things,

*making a pre-determined biomechanical alteration of a subject's corneal structure outside of an optical zone of the cornea; and using the biomechanical alteration to create an inflection region in the corneal structure...*

Tamayo is a defective anticipatory reference because it fails to disclose either of the underscored limitations of claim 1.

Contrary to the examiner's assertion, Tamayo does not disclose altering the annular zone or [sic] the cornea and not the central zone/optical zone. Tamayo discloses that the cornea has a central zone (radius  $\leq$  to 1.5 mm) and a peripheral zone (radius = 2.5 to 5 mm), and that the peripheral zone is responsible for near vision while the central zone is responsible

for far vision. The fact that either of these zones is responsible for any vision means, without doubt, that they are part of the optical zone of the eye (i.e., the region of the eye that passes light to the retina—as required for image formation, typically having a radius  $\geq 6$  mm as known in the art). Apparently the examiner has confused Tamayo’s use of the term central zone with optical zone and peripheral zone as not the optical zone; this is incorrect.

Applicant, further, respectfully directs the examiner’s attention to Tamayo Col. 5, lines 44-49 wherein it states:

*A peripheral ablation of +1.5 spherical diopters was performed in the optical zone B from 6.0 to 9.0 mm. Then a second peripheral ablation of +1.50 diopters was performed in the optical zone B from 5.5 to 9.0 mm.*

(emphasis added).

Thus the ablation in the peripheral zone as disclosed by Tamayo is neither outside of an optical zone nor a biomechanical alteration, as recited by applicant’s claim 1. Moreover, the ablation disclosed by Tamayo is not used to create an inflection region in the corneal structure; rather, the ablation disclosed by Tamayo is used to remove tissue to steepen the curvature of the cornea via direct corneal re-shaping, not via biomechanical alteration as required by applicant.

In view of the foregoing, Tamayo is a defective anticipatory reference against claim 1 and should be withdrawn. Since claim 4 depends from claim 1, Tamayo is also a defective anticipatory reference against claim 4.

### ***Claim Rejections – 35 USC §103***

Claim 2 is rejected under 35 USC §103(a) as being unpatentable over Tamayo *et al.*

6,969,386. Applicant respectfully traverses this rejection.

Claim 2 depends from claim 1. As Tamayo is a defective reference against claim 1 as set forth above, it cannot be used against claim 2 as the examiner submits. The rejection is improper and should be withdrawn.


*Conclusion*

Applicant believes that this response is timely and that no extension of time is necessary under 37 C.F.R. §1.136(a). In the event of error, Applicant hereby authorizes the Office to charge any necessary fee or surcharge with respect to said time extension to the deposit account of the undersigned firm of attorneys, Deposit Account 50-1546.

Please direct any questions or comments to William Greener at (607) 330-4012.

Respectfully submitted,  
BOND, SCHOENECK & KING, PLLC

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William Greener  
Registration No. 38,165  
BOND, SCHOENECK & KING, PLLC  
10 Brown Rd., Suite 201  
Ithaca, NY 14850-1248